United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1907

No. 1828.

517

ISAAC B. BURSEY, APPELLANT,

vs.

ISAAC S. LYON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED SEPTEMBER 13, 1907.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1907.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 4, 1907.

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In the Court of Appeals of the District of Columbia.

No. 1828.

ISAAC B. BURSEY, Appellant,
vs.
ISAAC S. LYON.

a Supreme Court of the District of Columbia.

At Law. No. 48112.

ISAAC S. LYON
vs.
ISAAC B. BURSEY.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed November 16, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48112.

ISAAC S. LYON
vs.
ISAAC B. BURSEY and NELLIE M. SIMMONS.

The plaintiff, Isaac S. Lyon, sues the defendants, Isaac B. Bursey and Nellie M. Simmons, to recover possession of all that piece or parcel of land and premises situate on Fifth street, northeast, in the City of Washington, District of Columbia, and known and designated as the north half of original lot numbered seven (7) in square numbered eight hundred and thirty-four (834), in said city and District, in all of which the plaintiff claims an estate in fee simple and of which he was lawfully seized and possessed on or about, to wit: the 1st day of October, 1905, when the defendants entered the

same and unlawfully ejected the plaintiff therefrom, and wrongfully entered into possession of the same, and thenceforward have wrongfully detained and still wrongfully detain the same from the plaintiff, and are wrongfully exercising acts of ownership thereon, and the plaintiff is entitled to possession thereof. And the plaintiff claims possession of said described land and premises with the improvements and appurtenances, besides costs of suit.

And plaintiff sues the defendants for rent, use and occupa-
2 tion and for mesne profits of said piece or parcel of land and premises situate on Fifth street, northeast, in the City of Washington, District of Columbia, and known and designated as the north half of original lot numbered seven (7) in square numbered eight hundred and thirty-four (834) from, to wit: the 1st day of October, 1905.

And plaintiff claims $300, besides costs of suit.

ISAAC S. LYON, *Plaintiff.*

The defendants are to plead hereto on or before the twentieth day exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

ISAAC S. LYON, *Plaintiff.*

Separate Plea of I. B. Bursey.

Filed December 6, 1905.

In the Supreme Court of the District of Columbia.

Law. #48112.

ISAAC S. LYON
vs.
ISAAC B. BURSEY and NELLIE M. SIMMONS.

Now comes the defendant Isaac B. Bursey, and for plea to the plaintiff's declaration says, he is not guilty as alleged.

LEO SIMMONS,
Attorney for Defendant.

3 *Separate Plea of Nellie M. Simmons.*

Filed December 6, 1905.

In the Supreme Court of the District of Columbia.

Law. #48112.

ISAAC S. LYON
vs.
ISAAC B. BURSEY and NELLIE M. SIMMONS.

Now comes the defendant Nellie M. Simmons and for plea to the plaintiff's declaration says, she is not guilty as alleged.

LEO SIMMONS,
Attorney for Defendant.

Joinder of Issue, &c.

Filed December 11, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48112.

ISAAC S. LYON
vs.
ISAAC B. BURSEY and NELLIE M. SIMMONS.

The plaintiff joins issue upon the plea of defendant Isaac B. Bursey, and also upon the plea of defendant Nellie M. Simmons.

ISAAC S. LYON, *Plaintiff.*

4 *Notice of Trial.*

To Leo Simmons, Esq., Attorney for Defendants:

Please take notice that the issue joined in this cause will be tried at the next term of this Court.

ISAAC S. LYON, *Plaintiff.*

Note of Issue.

(Title of cause same as stated above.)
Last pleading filed Dec. 11, 1905.
Plaintiff's Attorney: Isaac S. Lyon.
Defendants' Attorney: Leo Simmons.

ISAAC S. LYON, *Plaintiff.*

Memoranda.

June 11, 1906.—Jury sworn and respited.
June 12, 1906.—Verdict for Defendants.

5 Supreme Court of the District of Columbia.

THURSDAY, *June* 21, 1906.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

At Law. No. 48112.

ISAAC S. LYON, Pl't'f,
vs.
ISAAC B. BURSEY and NELLIE M. SIMMONS, Def'ts.

This cause coming on to be heard upon the plaintiff's motion for a new trial and motion in arrest of judgment, and the same

having been heard, it is considered that said motions be, and hereby are granted as to the defendant Isaac B. Bursey, and a new trial of this case ordered as to said defendant Isaac B. Bursey.

Further that said motions as to the defendant Nellie M. Simmons be, and the same hereby are overruled.

Therefore it is considered that the plaintiff take nothing by his suit against the defendant Nellie M. Simmons, and that the said defendant Nellie M. Simmons go thereof without day, and recover against the plaintiff, her costs of defense, to be taxed by the Clerk, and have execution thereof.

6 *Memoranda.*

March 4, 1907.—Jury sworn as to Defendant Bursey, and respited.

March 5, 1907.—Leave granted Plaintiff to amend declaration and original pleadings ordered to be treated as pleadings to amended declaration.

Amended Declaration.

Filed March 5, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 48112.

ISAAC S. LYON
vs.
ISAAC B. BURSEY.

The plaintiff by leave of the Court files this Amended Declaration as follows:

The plaintiff Isaac S. Lyon sues the defendant Isaac B. Bursey to recover possession of an undivided one-half of all that piece or parcel of land and premises situate on fifth street northeast in the City of Washington in the District of Columbia and known and designated as the north one-half of original lot numbered
7 seven in square numbered eight hundred and thirty-four in said City and District in which the plaintiff claims an estate in fee simple and of which he was possessed on to wit the 1st day of October 1905 when the defendant wrongfully entered the same and wrongfully ejected the plaintiff therefrom and thenceforward has wrongfully detained the same and still detains the same from the Plaintiff and the Plaintiff is entitled to possession of said undivided one-half interest.

And the plaintiff claims the possession of said one-half undivided interest in said described land and premises besides costs of suit.

JOHN RIDOUT,
Attorney for Plaintiff.

Memorandum.

March 5, 1907.—Verdict for Plaintiff.

Supreme Court of the District of Columbia.

FRIDAY, *March 22nd,* 1907.

Session resumed pursuant to adjournment Hon. Thos. H. Anderson, Justice presiding.

No. 48112. At Law.

ISAAC S. LYON, Plaintiff,
vs.
ISAAC B. BURSEY, Def't.

Upon consideration of the motion for a new trial filed
8 herein, and heretofore submitted to the Court, it is ordered that said motion be, and the same is hereby overruled and judgment on verdict is ordered. Thereupon, it is considered and adjudged that the plaintiff herein recover of the defendant Isaac B. Bursey, possession of an undivided one-half interest in the north one-half of Lot seven (7) in Square Eight Hundred and Thirty-four (834) in the City of Washington in the District of Columbia, and the costs of suit to be taxed by the Clerk, and have execution thereof.

From the aforegoing the defendant by his attorney in open Court notes an appeal to the Court of Appeals. Whereupon a bond for costs is fixed in the sum of One Hundred Dollars.

MONDAY, *April 1st,* 1907.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * * * *

No. 48112. At Law.

ISAAC S. LYON, Plaintiff,
vs.
ISAAC B. BURSEY, Def't.

Upon motion of defendant's attorney, this term is hereby prolonged thirty-eight days to settle the Bill of Exceptions.

9 *Memorandum.*

April 10, 1907.—Appeal bond approved and filed.

Supreme Court of the District of Columbia.

TUESDAY, *May 7th,* 1907.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

No. 48112. At Law.

ISAAC S. LYON, Plaintiff,
vs.
ISAAC B. BURSEY, Def't.

Upon motion of defendant's attorney in open Court, the time within which to file a transcript of the record herein in the Court of Appeals is hereby extended to and including the 31st instant.

TUESDAY, *May 14th,* 1907.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * * * *

10 No. 48112. At Law.

ISAAC S. LYON, Plaintiff,
vs.
Iassa B. BURSEY, Def't.

Upon motion of defendant's attorney, in open Court, the time within which to file a transcript of the record herein in the Court of Appeals is extended to July 20th, 1907, inclusive.

FRIDAY, *July 19th,* 1907.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * * * *

No. 48112. At Law.

ISAAC S. LYON, Plaintiff,
vs.
ISAAC B. BURSEY ET AL., Def'ts.

The time within which to file a transcript of record herein in the Court of Appeals is hereby extended to September 16th, 1907, inclusive.

SATURDAY, *August 17th,* 1907.

Session resumed, Hon. Wendell P. Stafford, Justice, presiding.

11 No. 48112. At Law.

ISAAC S. LYON, Plaintiff,
vs.
ISAAC B. BURSEY, Def't.

The Bill of Exceptions heretofore submitted herein, having been this day signed by the Court (Mr. Justice Anderson) it is ordered that the same be made of record as of the time of the noting thereof at the trial.

Bill of Exceptions.

Filed August 19, 1907.

In the Supreme Court of the District of Columbia.

No. 48112. At Law.

ISAAC S. LYON, Plaintiff,
v.
ISAAC B. BURSEY, Defendant.

Be it remembered that the above entitled cause came on for trial before Mr. Justice Anderson and a jury on Monday, March 4th, 1907, and thereupon and after the jury had been sworn to truly try the issues joined in said cause, the plaintiff to maintain the issues on his part joined gave in evidence a stipulation of counsel, the material parts of which read as follows:

12 *Stipulation.*

For the purpose of saving expense and time in formally proving the matters embraced herein, it is hereby stipulated and agreed by and between counsel of record for plaintiff and defendants as follows:

That the annexed paper-writing in the form of a memorandum correctly recites the substance of what appears in the Land Records of the District of Columbia; that the instruments referred to are, on the face of said records, proper in form, duly executed, acknowledged and recorded; that where the words "purports to be," or any similar terms or words, are used they mean that on the face of the said records the interest of the grantor is regularly conveyed so far as he has a right to convey it.

That the offer of evidence by any of the parties of any item of said memorandum shall have the same effect and none other as the offer of a duly certified copy of the record of the instrument referred to in the part so offered; but unless specially offered in evidence at the trial neither the memorandum nor any item thereof is to be considered as offered or admitted in evidence by this stipulation, and each of the parties reserves the right to offer such other evidence from the said records, or otherwise, as may be desired.

It is admitted the same as if fully proved that defendant Bursey was in possession of the property in controversy at the time of the institution of this suit.

HALLAM & HALLAM,
Attorneys for Plaintiff.
WM. HENRY WHITE,
Attorney for Defendant, Isaac B. Bursey.

13 *Memorandum.*

William R. Walker *et ux.* Lizzie to James B. Davis. — Dated May 18, 1888. Recorded June 21, 1888. Liber 1322, folio 346.

This purports to be a quit-claim deed to lot 7 by the grantor of all of his interest as "one of the children and heirs at law of William S. Walker, deceased."

John H. Walter to Bartow L. Walker. — Dated May 10, 1890. Recorded May 17, 1890. Liber 1494, folio 134.

This is a quit-claim deed to all of said lot 7.

Eliza Walker, widow; Lizzie Walker, unmarried; Olive Walker, unmarried, and Jennie Smith, respectively widow and only children and heirs at law of William R. Walker, deceased, brother of Mary E. Walker, also deceased, and Dolan Smith, husband of Jennie Smith, to Almea V. Davis. — Dated February 13, 1893. Recorded March 14, 1893. Liber 1792, folio 262.

This deed recites that Mary E. Walker was adjudged a lunatic in Equity Cause 14227, Supreme Court of the District of Columbia; that she died January 6, 1893, at Washington, D. C., seized and possessed of an undivided one-fourth part of Original Lot 7 in Square 834, City of Washington, District of Columbia, as one of the children of William S. Walker, deceased, leaving surviving her as her only heirs at law Almea V. Davis, a sister, Thomas D. Walker, a brother and Eliza Walker, Lizzie Walker, Olive Walker, and Jennie Smith, respectively widow and only children of William R. Walker, another brother, deceased.

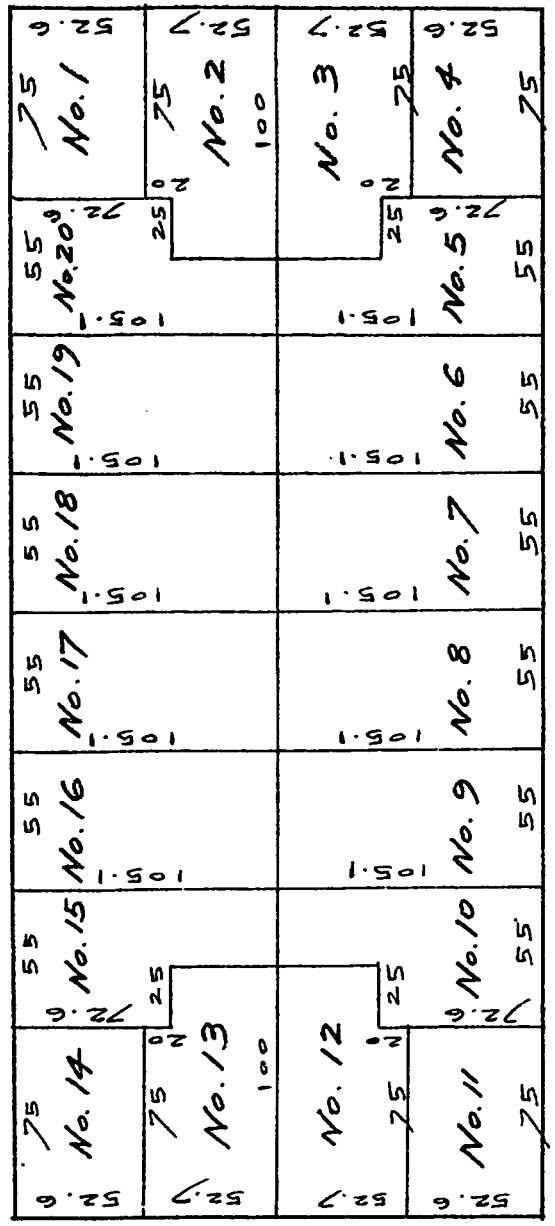
Conveys the undivided interest in said lot in fee.

Almea V. Davis, widow, and Thomas D. Walker, unmarried, to Isaac S. Lyon. — Dated February 14, 1893. Recorded March 21, 1893. Liber 1776, folio 485.

14 Contains the same recitals as to Mary E. Walker as are contained in the preceding deed and purports to convey all the right, title and interest of the grantors in and to original lot 7, Square 834, Washington, District of Columbia.

North F Street

6th Street, East



North G Street

5th Street, East

The plaintiff further to maintain the issues on his part joined, gave in evidence the testimony of EDWARD F. CONKLIN, who testified that he had been the Chief Clerk of the Office of Public Buildings and Grounds in the Office of the Chief Engineers in the War Department for twenty-eight years and still held such position; that the records and documents of the Commissioners appointed to divide the lands of the City of Washington, District of Columbia, between the original proprietors and the United States are kept in that office and are now in witness' custody; that these records were in said office when witness first entered it and have been there continuously ever since; that for the past three years witness has been in immediate charge of these records, and that prior thereto they were in the immediate charge of John Stewart, surveyor and draftsman in said office; and that witness has brought with him from that office the original certificate of division as to the lots in Square 834, in the City of Washington, District of Columbia. The witness here produced the original certificate of division of lots in Square 834, which certificate reads as follows:

At the request of the Commissioners appointed under the Act of Congress for establishing the temporary and permanent seat of the government of the United States, the following Square in the City of Washington was recorded the 17th day of March 1797.

(Here follows plat of square, marked p. 15.)

16 Square No. 834, City of Washington.

Bounded on	The north by G Street North	two hundred and ten feet two Inches
	The south by F Street North	
	The east by 6th Street East	four hundred and eighty feet
	The west by 5th Street East	

As p. return dated June 12, 1795.

JAMES R. DERMOTT.

Sept'r 29, 1796.

The Commissioners and George Walker and William Prout original proprietors of this Square numbered Eight hundred and thirty-four in the City of Washington have agreed on the division thereof in manner following to wit Lots numbered three, four, five, six and seven are to remain to the said William Prout. Lots numbered thirteen, fourteen, fifteen, sixteen & seventeen are to remain to the said George Walker, and Lots numbered one, two, eight, nine, ten, eleven, twelve, eighteen, nineteen and twenty are subject to be sold agreeably to the Deeds of Trust concerning Lands in the said City.

Witness our hands this twenty-ninth day of September in the Year one thousand and seven hundred and ninety-six.

GUSTS. SCOTT,
WILLIAM THORNTON,
ALEXR. WHITE,
GEO. WALKER,
WM. PROUT,
Commiss'rs.

Witness:

WM. BRENT.
T. MUNROE.

On the back of said certificate appears the following endorsement:

Square No. 834.

Received to be recorded the 17th day of March, 1797, and same day was recorded in Square Book No. 3 folio 834, one of the Square Records for that part of Columbia which lies within the State of Maryland. Ex'd by

JNO. M. GANTT, *Clk.*

To the introduction of this paper the defendant by his attorney then and there objected on the ground that the paper had not been properly identified or proved; that it was not produced from the proper custody of such paper; that it did not purport on its face to transfer any title from the United States, and that it was not sufficient to transfer any such title, and that it did not show
17 any title in William Prout to the land in controversy. The Court overruled the objection of the defendant and allowed the said paper to be read to the jury, to which the defendant then and there duly excepted.

Thereupon the plaintiff, to maintain the issues upon his part joined, offered in evidence original Book 3 of the "Records of Squares," one of the books in the Surveyor's Office of the District of Columbia, and particularly page 834 thereof, which said page is in words and figures identical with the paper above shown to have been introduced by the witness Concklin. To the introduction of this book and page the defendant by his counsel then and there objected on the ground that the said book and page is not a public record made under authority of law; that it is not shown to be a true copy of an original and that the original was lost or destroyed; that it is not the best evidence; that it does not on its face purport to convey any title from the United States to William Prout; that it does not show that William Prout had any title to the land in controversy; and that the record on its face shows that it is not an original record. The Court overruled the objection and permitted the plaintiff to read the said book and page to the jury, to which the defendant duly excepted.

And further to maintain the issues on his part joined, the plaintiff gave in evidence the testimony of JUDSON T. CULL, who testified that he had been examining titles to real estate in the District of Columbia since 1868; that in examining titles he first went to the square books in the Surveyor's Office and ascertained which
18 lots were assigned to the Government in the division between the Government and the original proprietors; then, if from the Government, to deduce title from that by deed or whatever method was recognized by law as taking title out of the Government. If, however, the book showed a certain lot to have been assigned to William Prout as original proprietor, the next step would be to trace title from Prout, that is, to see whether Prout had conveyed it away by his own personal deed, or if no deed, whether he had left a will and provided for it; and if no will, then to ascertain his heirs and derive title from them. Thereupon the witness was asked the following question:

"Q. Is there not a well known judicial proceeding involving the partition of the Prout property recognized by title examiners?"

To this question defendant's counsel objected on the ground that the judicial proceeding was the best evidence, but the Court overruled the objection and allowed the witness to answer, to which ruling defendant then and there duly excepted; whereupon the witness answered as follows:

"A. Yes, there is such a record, that is, for nearly all the property that William Prout died seized of. There are a few pieces of property that belonged to him that were not contained in it, but the great mass of property he died seized of was."

Witness further said that this proceeding was Chancery Partitions 82; that he has not consulted these proceedings since 1868; that he made a copy of it then, years ago, when it was in better shape than now, which copy he has as his own private records; that a copy of a part of the proceedings was made by one McNamee, Assistant Clerk of the Court, in Book J. A. S. No. 1, at page 529.

19 Thereupon the witness was asked the following question:

"Q. As a result of the information obtained by your practice since the period you have mentioned, what has been the uniform starting point adopted in the examination of titles and the preparation of abstracts of title where the allotment between the Commissioners and the original proprietors is involved?"

To which question defendant's counsel duly objected on the ground that this is matter of law, and not the subject of proof, and that the practice of this witness in examining titles is incompetent, irrelevant and immaterial; but the Court overruled the objection and allowed the witness to answer, whereupon counsel for defendant duly excepted, and the witness answered as follows:

"A. Within the City of Washington, what is known as the Square Books in the Surveyor's Office."

To each of the following six questions counsel for defendant duly objected upon the same grounds as to the question last above, but the Court overruled the objection and allowed the witness to answer, to which counsel for defendant duly excepted:

"Q. Have you had occasion to examine many titles on Capitol Hill? A. Yes.

Q. What books did you begin with? A. I began with those books that are known as the Square Books in the Surveyor's Office.

Q. Have you in the course of your examinations of titles to land on Capitol Hill found an allotment to William Prout? A. Yes.

Q. Have you not been personally acquainted with the leading title examiners of this city since 1868? A. Yes.

Q. Are you familiar with their practice in the examination of titles? A. Yes.

Q. What has been the unbroken practice of title examiners in the District of Columbia in deducing a Prout title after finding an allotment to him? A. In deducing a Prout title, or any other title, the method is this among all examiners: a person having
20 come to us to examine a piece of property in the City of Washington we would go to the Surveyor's Office and examine these Square Books."

Counsel for plaintiff then offered in evidence papers from the records of the Clerk's Office of the Supreme Court of the District of Columbia purporting to be the papers in Cause 82, partitions, for division of the estate of William Prout, deceased, and including the commissioners' return and the decree of the Circuit Court of the District of Columbia for Washington County ratifying a partition by commissioners appointed for the purpose, of the real estate of William Prout, deceased, among his heirs; to the admission of which in evidence defendant's counsel objected on the ground that the court had no jurisdiction to pass any such decree; that there was no showing that William Prout owned the land in controversy, that he was dead, that he died intestate, that any proceeding was brought by any proper person, that any or all of the heirs were before the court, that any persons were appointed as commissioners, or that the decree was part of a chain of title from the sovereignty to the plaintiff; but the Court overruled the objection and admitted the said paper in evidence, to which counsel for defendant duly excepted. Said decree is as follows:

Petition for the Division of the Estate of William Prout, Deceased, Amongst His Heirs at Law.

In the Circuit Court of the District of Columbia for Washington County.

It appearing to the satisfaction of this court that the former order of this court made in this cause on the 23 day of March 1831 for the ratification and confirmation *nisi* of the report of the commissioners appointed to make division of the estate of William Prout, deceased, amongst his heirs at law has been duly published in con-
21 formity with the said order and no cause having been shown against the ratification or confirmation of the said report or the partition or allotment made by the said commissioners it is therefore this 17 day of June 1831 by this court ordered that the said re-

port partition and allotment be and the same are hereby finally ratified and confirmed.

By order of the Court, W. BRENT, *Cl'k.*

Thereupon the return of the commissioners appointed in said cause to make partition was read to the jury, also the order of the court confirming said award, and all the other papers were exhibited to and considered by the court. It is agreed that the original papers offered in evidence may be used on the hearing of this cause on appeal.

Plaintiff's counsel then offered in evidence Chancery Partitions Book J. A. S. No. 1, and particularly pages 529 *et seq.*, one of the books on file in the Clerk's Office of the Supreme Court of the District of Columbia, to which counsel for defendant duly objected on the ground that it appeared upon its face to be merely a copy of a report of certain persons describing themselves as commissioners; that there is nothing in the record which shows their appointment as commissioners or that they qualified as such; that there is nothing in the record to show that there were any proper parties before the court as either plaintiffs or defendants, or anything showing jurisdiction in the court, or any authority for the partition of any particular land described in the alleged report; that there was no showing of the loss of the original report or that it is not in its proper place in the records of the Clerk's Office of the Supreme Court of the District of Columbia; but the Court overruled the objections and allowed the copy of said report to be read in evidence,
22 to which counsel for defendant then and there duly excepted. The same is in words and figures as follows:

In the Matter of the Estate of WILLIAM PROUT.

To the Honorable the Judges of the Circuit Court of *of* the District of Columbia for the County of Washington:

We the subscribers commissioners named in the commission hereto annexed, in virtue of the powers vested in us by the said commission do certify and return to your honors, that in execution of the said commission, on the twentieth day of September one thousand eight hundred and thirty and having given reasonable notice to all the parties concerned of the matter of our proceeding in the execution of the said commission before any other proceeding was had as will appear by the notice herewith returned and which we pray may be taken as part of this our return, we in conformity with said notice met on the 12 day of September 1830 at the time and place in said notice mentioned and having made an accurate view and observation of the pieces or parcels of ground and premises in said commission mentioned, and then and there took into consideration every circumstance relative to the said pieces of parcels of ground and premises in the said commission mentioned were of opinion and did adjudge and determine that all the said pieces or parcels of ground and premises could be divided without loss or injury to all or any of the parties entitled.
23 And we did therefore divide and make partition of the same fairly and equally in value between all the parties interested according to their several proportions as follows viz:

To Jonathan Prout (a large number of lots described).
To Robert Prout (a large number of lots described).
To William Prout as follows:
834 Lots three four five six & seven.
(And a large number of other squares and lots.)
To Martha Hale McKnight (a large number of lots described).
To Mary Prout (a large number of lots described).

In testimony whereof we have set our hands and seals this fifth day of November one thousand eight hundred and thirty.

EDW'D SIMMS. [SEAL.]
GEO. ADAMS. [SEAL.]
JAMES FRIEND. [SEAL.]
JOHN NOWLAND. [SEAL.]

Thereupon counsel for plaintiff offered in evidence a book entitled "Chancery Partitions," being one of the records of the Clerk's Office of the Supreme Court of the District of Columbia, and particularly the entries therein at No. 82, to which counsel for defendant then and there duly objected on the ground that there is no petition or appearance for plaintiff or defendant, or any other proceed-
24 ing giving the court jurisdiction, no description of the property, no showing as to who were the heirs of William Prout, no showing that he was dead and died intestate, either by pleadings or proof, no showing that all or any of his heirs were parties, nor any showing that original proceedings were on file, or having been on file, in the Clerk's Office of the Supreme Court of the District of Columbia, were lost or destroyed, or if on file, that they are not now on file, for which reasons the evidence offered is not the best evidence and is incompetent, irrelevant and immaterial, and insufficient to show that whatever title William Prout had was transferred to any other person, or that title ever passed from the sovereignty; but the Court overruled the said objection and allowed the said book and page to be offered in evidence to which ruling defendant's counsell then and there duly excepted. The said book and page are in words and figures as follows:

August 30th	Jonathan Prout & others Clerk $68.04 to divide the Real Estate of William Prout, Dec'd.	Petition & list of prop'y Alex. McWilliams appointed Guard'n to Mary Prout.
82		1830, August 30th, Com. issued to Edw'd Simms & others. 1830, Dec. 15, Com. & Com'rs report filed. " " Term March 23d, 1831, order rat. *nisi.* 1831, June 17th, final order of ratification. Division Recorded in Chancery Record J. A. S. No. 1, page 529.

The witness Cull further said that he has personally ex-
25 amined hundreds of Prout titles.

Plaintiff next offered in evidence a duly certified copy of a record in the Office of the Recorder of Deeds for the District of Columbia purporting to be a deed from William Prout to Nathaniel Brady, to the admission of which in evidence counsel for defendant then and there objected on the ground that the said alleged deed did not describe any land in the District of Columbia, or the land involved in the suit, and did not convey title from the sovereignty, or form part of a chain of title from the sovereignty to plaintiff, and that the wife of said William Prout, who acknowledged the deed, did not sign the same; but the Court overruled the objection and permitted the deed to be read in evidence, to which counsel for defendant then and there excepted. Said deed is in the words and figures following:

William Prout
to
Nathaniel Bradey. } Deed.
Recorded 13th May, 1839.

This indenture made this sixth day of December in the year of our Lord one thousand eight hundred and thirty-eight, between William Prout of the City of Washington, District of Columbia, of the one part and Nathaniel Bradey of the same place of the other part witnesseth that the said party of the first part for and in consideration of the sum of seventy-five dollars current money of the United States to him in hand paid at or before the sealing
26 and delivery of these presents by the said party of the second part the receipt of which is hereby acknowledged hath given, granted, bargained, and sold, enfeoffed, conveyed, released and confirmed and by these presents doth give, grant, bargain, and sell, enfeoff, convey, release, and confirm, unto the said party of the second part, his heirs and assigns forever all the hereinafter described lots and part of lot lying in the City of Washington to wit part of lot number three and all of lot number four in Square number eight hundred and twenty-one; beginning for the same at the southwest corner of said square, and running due north seventy feet; thence east sixty-five feet one inch; thence south seventy feet; thence west sixty-five feet one inch to the place of beginning. Also all of lots number three, four, five, six, and seven in square number eight hundred and thirty-four; beginning at the southwest corner of said square, and running due north two hundred and forty feet, thence east one hundred and five feet one inch, thence south two hundred and forty feet; thence west one hundred and five feet one inch to the place of beginning together with the buildings, improvements, rights, privileges, appurtenances and other hereditaments to the same belonging, or in any manner appertaining and the remainders, reversions, rents issues and profits thereof, and all the right, title, and interest and estate of him, the said party of the first part, in and to the same. To have and to hold the said lots and part

of lot and premises with the appurtenances unto him the
27 said party of the second part his heirs and assigns to his and
their sole use benefit and behoof forever. And the said party of the first part, for himself his heirs, executors and administrators, by these presents, covenants, promises and agrees, to and with the said party of the second part, his heirs and assigns, that he the said party of the first part, and his heirs shall and will warrant and forever defend the said lots and part of lot and premises, with the appurtenances hereby bargained and sold, unto him the said party of the second part, his heirs and assigns, from and against him, the said party of the first part, his heirs and assigns, and all persons claiming, or who may claim by under, or through him, them, or any of them, and from and against all manner of persons and claims whatsoever. And further, that he the said party of the first part, and his heirs, shall and will at any and at all times hereafter at the request and costs of the said party of the second part, his heirs and assigns, make and execute any and every other deed or assurance in the law, for the more sure and effectual conveyance of the said lots and part of lot and premises, with the appurtenances, to the said party of the second part, his heirs and assigns, that the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall or may devise advise or require.

In testimony whereof the said William Prout hath here-
28 unto set his hand, and affixed his seal, the day and year first hereinbefore written.

WILLIAM PROUT. [SEAL.]

Signed sealed and delivered in the presence of
C. H. WILTBERGER.
B. K. MORSELL.

DISTRICT OF COLUMBIA, *Washington County, To wit:*

Be it remembered that on this fifth day of December in the year one thousand eight hundred and thirty-eight before the undersigned two justices of the peace in and for said County personally appeared William Prout party grantor within named who acknowledges the within and foregoing instrument of writing to be his act and deed and the lots and part of lot and premises with the appurtenances therein mentioned to be the right and estate of the therein named grantee Nathaniel Bradey, his heirs and assigns forever. And now at the same time personally appears Rachael L. wife of the said William Prout who also makes her acknowledgment of the same. And she being by us privily examined apart from and out of the presence and hearing of her husband "Whether she doth make her acknowledge- of the same, willingly and freely and without being induced thereto by fear or threats of or ill-usage by her husband or fear of his displeasure? she acknowledges and declares that she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill-
29 usage by her husband or fear of his displeasure.

Taken before and certified by
C. H. WILTBERGER, *J. P.*
B. K. MORSELL, *J. P.*

Counsel for plaintiff then offered in evidence duly certified copy from the records of the Office of the Recorder of Deeds of the District of Columbia what purports to be a deed in fee from Nathaniel Brady to William S. Walker of the property involved in this suit, to which counsel for defendant objected on the ground that the wife of said Nathaniel Brady does not sign but does acknowledge, and that the acknowledgment does not show that it was taken in the District of Columbia, and also objected on the ground that it does not convey title from the sovereignty, or form part of a chain of title from the sovereignty to plaintiff; but the Court overruled said objection and admitted said deed in evidence, to which counsel for defendant duly excepted. The signature and acknowledgment to said deed are as follows:

In testimony whereof the said Nathaniel Bradey hath hereunto set his hand and affixed his seal the day and year first hereinbefore written.

NATH'L BRADEY. [SEAL.]

Signed sealed and delivered in the presence of

JAMES MARSHALL.
WILL HEBB.

DISTRICT OF COLUMBIA, *Washington County, To wit:*

Be it remembered that on this thirtyeth day of May in the year one thousand eight hundred and thirty-nine before the undersigned personally appears Nath'l Bradey party grantor within named who acknowledges the within and foregoing instrument of writing to be his act and deed and the lot or pieces of ground and premises with the appurtenances therein mentioned to be the right and estate of the therein named grantee William S. Walker his heirs and assigns forever.

And now at the same time personally appears Susannah Bradey wife of the said Nath'l Bradey who also makes her acknowledgment of the same. And she being by us privily examined apart from and out of the presence and hearing of her husband whether she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill-usage by her husband or fear of his displeasure? she acknowledges and declares that she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill-usage by her husband or fear of his displeasure. Taken before and certified by us.

JAMES MARSHALL, *J. P.*
WILL HEBB.

Plaintiff next produced as a witness MARGARET R. PALMER, who testified as follows: I knew Almea V. Davis. I have known her since 1848. She was my stepmother, and was the daughter of William S. Walker. She died in 1898. I knew the William S. Walker

family intimately since about 1848, and in 1888 the only
31 living descendants of William S. Walker were William R. Walker, Thomas D. Walker, Mary E. Walker and Almea V. Davis. I lived in the same house with Almea V. Davis after she married my father. I had conversations with her concerning the William S. Walker family history, and discussed the names of her brothers and sisters, and they were the four I have mentioned. Since 1888 William R. Walker and Mary E. Walker have died. Mary E. Walker never married and left no children. William R. Walker left a widow, Eliza Walker, and three children, Lizzie Walker, Olive Walker and Jennie Smith. I know the handwriting of Thomas D. Walker, and have seen him write. The signatures to the depositions shown the witness were those of Thomas D. Walker hereinafter referred to. I am 65 years old. I saw Thomas D. Walker a month ago in Washington City. He is now in South Dakota.

Counsel for defendant at the close of this witness' testimony moved to strike all of it out except that part relating to the whereabouts of Thomas D. Walker, on the ground that it was incompetent, irrelevant and immaterial; but the Court overruled the objection, to which counsel for defendant then and there duly excepted.

Counsel for plaintiff next offered in evidence the deposition of Almea V. Davis taken in the case wherein Bartow L. Walker, *et ux.* Genevieve E. Walker, and John H. Walter are complainants, and Mary E. Walker, Thomas D. Walker, Eleanor V. Walker, Almea V. Brockwell, William N. Brockwell, Isaac S. Lyon, and Addie T. Lyon are defendants, the same being equity Cause No. 11,590, in the Supreme Court of the District of Columbia, to which
32 counsel for defendant objected on the ground that the said testimony not having been taken in this cause, the same was hearsay, no opportunity having been given to defendant in this cause to cross-examine the said witness; that the same was not in any way binding upon this defendant; that the parties to said cause are not the same as the parties in this cause, nor in privity with them, and that a decree in said cause would not be evidence in this cause; and that the same is incompetent, irrelevant and immaterial; but the Court overruled the said objection and allowed the said deposition to be read in evidence, to which counsel for defendant then and there duly excepted. Said deposition is as follows:

Deposition of ALMEA V. DAVIS, taken October 19, 1894. I knew William S. Walker, who was my father. He died July 1, 1844. He had six children named George, Elizabeth, William R., Thomas Douglas, Mary Ellen, and myself. He had children that died in their infancy. I think two. George is dead. He was never married. He died at the age of 21, more than 10 years ago. Elizabeth died. She had a husband, James Teachum, who is dead. They had no children. She has been dead many years. Thomas D. Walker is in the west. He is living and is a widower. William R. Walker has been dead for three or four years. He has three children living,

and one that died. The oldest child is Virginia, the second one is Elizabeth or Lizzie, and the other is Olive. Virginia is married to Dolan Smith. Olie and Lizzie are not married. The wife of William R. Walker is living. Her name is Eliza. My husband's name was James B. Davis. He is dead. Mary E. Walker is dead.
33 She has been dead for two years. She was deranged from her infancy and was in St. Elizabeth's. My mother is dead.

Thereupon counsel for defendant moved to strike out said testimony on the same grounds made before its admission in evidence, but the Court overruled the said motion, to which counsel for defendant then and there duly excepted.

Counsel for plaintiff next offered in evidence the deposition of THOMAS D. WALKER, taken in this cause January 24, 1906, before the first trial thereof, which deposition is as follows:

I am 70 years old and reside at 319 Cameron Street, Alexandria, Va. I am uncertain how long I will remain there. My residence there is temporary. William S. Walker was my father, was resident of the District of Columbia, and died in Washington July 1, 1844. My father did not leave a will. He had eight children, two of whom died a long time before I was born. The other six are George, Elizabeth, William R., Mary Ellen, Almea V. Davis, and myself. George is dead. He died at sea many years ago, in 1845 or 46. He did not leave a will and was never married. He was the oldest of the children. Elizabeth died in Washington more than 50 years ago. She did not leave a will. She was married to James Teachum. She had no children, and her husband is dead. William R. Walker died in Trinidad, Colorado, about 1891. He did not leave a will. He had three children, Virginia or Jennie, Elizabeth or Lizzie, and Olive. He had another child by his first wife, but this child died in its infancy. The wife of William R. Walker is living and her
34 name is Eliza. I have lived with my brother William R. Walker at Trinidad, Colorado. He was born in Washington, went to Colorado in 1855 or '56, and lived in Trinidad for 20 years before his death. Mary Ellen Walker died in the District January 6, 1893, at St. Elizabeth's Insane Asylum, where she had been since she was a child. She was never married. Her heirs were myself and the three children and widow of William R. Walker. All the rest of her brothers and sisters had died before her. That is my genuine signature and the signature of my wife to the deed handed me, and I identify the signatures of Eliza Walker, widow of William R. Walker, and of Lizzie Walker, Olive Walker, and Jennie Smith to another deed handed me. All of these three children of William R. Walker were of age at the time of executing this deed. I also identify the signature of Almea V. Davis to another deed handed me. She died in 1898 in Washington, D. C., and her husband is dead. He was dead at the time the last above deed was executed. She had no children. My mother died more than 20 years ago.

The same witness also testified by deposition April 17, 1906, as follows: The Mary E. Walker referred to in my former testimony

was my sister. She was older than I, and was admitted to the insane asylum about 1855, when she was about 23 years old. She was insane from her birth to her death. She was born in 1832. Almea V. Davis was born in 1836. I was born in 1835. I had a general acquaintance with the property involved in this suit in the 50's and early 60's. The whole section out there was then in a wild state with no improvements anywhere on the west side
35 of that square. There were none on the lot in question. That time that I am speaking of now includes from my earliest recollection up to about 1862. Up to that time there were no improvements whatever on that lot.

Counsel for plaintiff then offered in evidence a duly certified copy of the record of a deed in fee of Lot 7, Square 834, Washington, D. C., and other property, William R. Walker and wife to James B. Davis, to which counsel for defendant objected on the ground that it does not convey title from the sovereignty nor form part of a chain of title from the sovereignty to the plaintiff; but the Court overruled the objection and admitted the deed in evidence, to which counsel for defendant duly excepted.

Thereupon counsel for plaintiff offered in evidence a certified copy of the record in the Office of the Recorder of Deeds of the District of Columbia, purporting to be a deed in fee to a one-fourth interest in the land involved in this suit, from Thomas D. Walker and wife to Isaac S. Lyon, the plaintiff. To the admission of this copy counsel for defendant objected on the ground that the certificate of the notary public shows that he is a notary public in and for the County of Las Animas, State of Colorado, and that the said deed was acknowledged in the District of Columbia, and further that the certificate of the County Clerk of Las Animas, Colorado, attached to said deed, was not made by the Clerk, but was made by a deputy; but the Court overruled the objection and admitted the said certified copy in evidence, to which counsel for defendant then and there duly excepted. The said certified copy is in words and
36 figures as follows:

Thomas D. Walker *et ux.* to Isaac S. Lyon. } Recorded June 27, 1889. Deed.

Whereas one William S. Walker late of the City of Washington, District of Columbia, died intestate on or about 1844 seized and possessed of all of original lot numbered seven (7) in Square numbered eight hundred and thirty-four (834) situated in the City of Washington, District of Columbia, and left surviving him Elizabeth Walker, his widow, now deceased, and the following four children as his only heirs at law, viz: William R. Walker, Thomas D. Walker, Mary E. Walker and Almea V. Walker, who married James B. Davis: * * * Now therefore this indenture made this seventeenth day of June in the year of our Lord one thousand eight hundred and eighty-nine by and between Thomas D. Walker of the County of Las Animas, State of Colorado, and Eleanor V. Walker, his wife, of the City of Washington, District of Columbia, of the

first part, and Isaac S. Lyon of the City of Washington, District of Columbia, party of the second part, witnesseth that the said parties of the first part * * * do by these presents grant, bargain and sell * * * unto the said party of the second part his heirs and assigns forever the following described real estate situate in the City of Washington in the District of Columbia, to wit: all that
37 certain piece or parcel of land and premises known and distinguished as and being one undivided fourth part of original lot numbered seven (7) in square numbered eight hundred and thirty-four (834) * * *

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

THOMAS D. WALKER. [SEAL.]
ELEANOR V. WALKER. [SEAL.]

Signed, sealed and delivered in the presence of:
WILLIAM R. WALKER.
GIDEON B. COMILL.
G. W. BALLOCK.

DISTRICT OF COLUMBIA, *County of Washington:*

I, G. W. Ballock, a notary public in and for the District and County aforesaid do hereby certify that Eleanor V. Walker, wife of Thomas D. Walker, party to a certain deed bearing date on the seventeenth day of June A. D. 1889, and hereunto annexed personally appeared before me in the District and County aforesaid the said Eleanor V. Walker, wife of Thomas D. Walker, being personally well known to me to be the person who executed the said deed and acknowledged the same to be her act and deed. * * *

Given under my hand and notarial seal this 27 day of June, 1889.

G. W. BALLOCK,
[NOTARIAL SEAL.] *Notary Public.*

38 COUNTY OF LAS ANIMAS, *State of Colorado, To wit:*

I, Edward D. Bright, a notary public in and for the County and State aforesaid do hereby certify that Thomas D. Walker party to a certain deed bearing date on the seventeenth day of June A. D. 1889, and hereunto annexed, personally appeared before me in the District aforesaid the said Thomas D. Walker being personally well known to me to be the person who executed the said deed and acknowledged the same to be his act and deed. Given under my hand and notarial seal this 22nd day of June 1889.

My com. exp. Dec. 15th/'89.

[NOTARIAL SEAL.] EDWARD D. BRIGHT,
Notary Public.

STATE OF COLORADO, *County of Las Animas, ss:*

I, Jesus Ma. Garcia, County Clerk within and for said County in the State aforesaid do hereby certify that E. D. Bright before whom

the foregoing acknowledgment was taken was at the date thereof a notary public in and for the County of Las Animas duly commissioned and qualified and authorized by the laws of Colorado to sign the same and that the same is taken in accordance with the laws of Colorado. I further certify that I am well acquainted with his handwriting and I verily believe the signature to the foregoing is genuine.

Witness my hand and official seal at Trinidad, in said
39 County, this 22nd day of June A. D. 1889.

JESES MA. GARCIA,
County Clerk,
[COURT SEAL.] By EUGENIO GARCIA, *Deputy.*

Counsel for plaintiff next offered in evidence what purported to be an original deed from said Thomas D. Walker and wife to said Isaac S. Lyon of a one-fourth interest in the land involved in this suit, the signature to which deed was identified in the aforesaid deposition of Thomas D. Walker, to the admission of which deed counsel for defendant objected on the ground that the paper appears to have been witnessed by persons whose names appear thereon as witnesses, which objection was by the Court sustained.

Thereupon the plaintiff testified in his own behalf that he knows the handwriting of Thomas D. Walker; that the signature to said deed is in his (Walker's) handwriting; that William R. Walker is dead; that witness does not know where one O'Neil, one of the subscribing witnesses, lives; that he got the paper from Thomas D. Walker by mail from Trinidad, Colorado.

Whereupon the counsel for plaintiff again offered said deed in evidence "to enable the Court to confirm or overrule his former impression as to the notary's certificate" to the certified copy theretofore admitted in evidence, to which counsel for defendant then and there objected on the ground that the said deed was witnessed by persons whose names are subscribed as witnesses; that the best evidence of its execution was the testimony of those witnesses, or in their
40 absence proof of their handwriting, but the Court overruled the objection and admitted the deed in evidence, to which counsel for defendant then and there duly excepted. This deed is identical with the certified copy thereof set out in full above, and it is agreed that the same may be produced at the hearing of this cause on appeal.

Counsel for plaintiff next offered in evidence a duly certified copy of the record in the Office of the Recorder of Deeds of the District of Columbia, which purports to be a deed in fee from "Almea V. Davis in her own right, and James B. Davis her husband, and James B. Davis in his own right, and Almea V. Davis, his wife," to Bartow L. Walker and John H. Walter for Lot 7, Square 834, City of Washington, District of Columbia; and a deed in fee to said property from said John H. Walter to Bartow L. Walker; to each of which deeds counsel for defendant objected on the ground that they did not convey title from the sovereignty, nor form part of a chain of title from the sovereignty to the plaintiff; but the Court overruled

the objection and admitted said deeds in evidence, to which counsel for defendant duly excepted.

Counsel for plaintiff next offered in evidence a duly certified copy of the record of a deed in fee from Eliza Walker, widow, Lizzie Walker, unmarried, Olive Walker, unmarried, and Jennie Smith, and Dolan Smith, her husband, to Almea V. Davis, of "all their right, title and interest in and to that certain piece or parcel of land and premises known and distinguished as and being all of original lot numbered seven in Square 834, Washington, D. C.;" and said deed also recited that Mary E. Walker theretofore died seized
41 and possessed of an undivided one-fourth part of the property described as one of the children of William S. Walker, deceased, leaving surviving her as her only heirs at law, Almea V. Davis, a sister, Thomas D. Walker, a brother, and Eliza Walker, Lizzie Walker, Olive Walker, and Jennie Smith, respectively widow and only children of William R. Walker, another brother deceased, and that Dolan Smith is the husband of Jennie Smith. Counsel for defendant objected to the admission of said deed in evidence on the ground that it did not convey title from the sovereignty, nor form part of a chain of title from the sovereignty to the plaintiff; but the Court overruled the objection and admitted the said deed in evidence, to which counsel for defendant then and there duly excepted.

Counsel for plaintiff next offered in evidence duly certified copy of the record of a deed in fee in the Office of the Recorder of Deeds for the District of Columbia, from Almea V. Davis and Thomas D. Walker to Isaac S. Lyon, conveying all the right, title and interest of the grantors in and to original Lot 7, Square 834, Washington, District of Columbia, to which counsel for defendant objected on the ground that the said writing does not convey title from the sovereignty, or form part of a chain of title from the sovereignty to the plaintiff; but the Court overruled the objection and admitted said deed in evidence, to which counsel for defendant then and there excepted.

Thereupon counsel for plaintiff offered in evidence the papers and proceedings in the cause of Genevieve E. Walker, by her
42 next friend, *v.* Bartow L. Walker, *et al.*, Equity Cause No. 16,513, which was a bill filed June 9, 1895, to establish a trust upon Lot 7, Square 834, in favor of the complainant; decree of June 5, 1896, appointing Michael J. Colbert, John Ridout and Leo Simmons, trustees to sell the south half only of said lot, to the admission of which counsel for defendant then and there duly objected on the ground that the said proceedings did not purport to convey, or authorize the conveyance, of the north half of said lot, the real estate in controversy, which objection was by the Court sustained.

Counsel for plaintiff next offered in evidence certified copy of a record of a deed from Michael J. Colbert, John Ridout and Leo Simmons, trustees, to Isaac S. Lyon, dated March 10, 1903, recorded April 10, 1903, Liber 2718, folio 485 purporting to convey the north half of said Lot 7, to the admission of which in evidence counsel for defendant then and there duly objected on the ground that it did not form a part of the chain of title to the plaintiff, and that no

evidence was offered showing any title in said trustees to the north half of said lot, which objection was by the Court sustained.

All of the foregoing deeds were duly recorded in the Office of the Recorder of Deeds for the District of Columbia.

And here the plaintiff rested his case.

Counsel for defendant thereupon moved the Court to direct the jury to return a verdict for the defendant on the grounds: first, that the testimony for the plaintiff did not show a record title from the sovereignty to the plaintiff; second, that the testimony did
43 not show that either plaintiff or any person under whom he claimed had ever been in possession of the real estate in litigation; and third, that plaintiff's declaration claimed the whole of the property in litigation, and that the deeds under which he claimed did not purport to convey more than a one-half undivided interest in said property.

Counsel for defendant, while said motion was pending, announced to the Court that the defendant intended to stand on said motion, and that no testimony would be offered for the defendant; whereupon counsel for plaintiff, while said motion was pending, asked leave to amend the plaintiff's declaration so as to claim an undivided one-half interest in the land involved in this suit, instead of the whole interest, to which counsel for defendant objected on the ground that it was the duty of the Court under the provisions of the Code of Law for the District of Columbia to sustain defendant's motion to direct a verdict for the defendant, or if the Court should be of opinion that plaintiff had proved title to a one-half undivided interest in said property, to direct the jury to find a verdict for plaintiff for such one-half undivided interest, and for the defendant as to the other part thereof; but the Court overruled the objection of the defendant and allowed the plaintiff to amend his declaration as asked, to which counsel for defendant then and there duly excepted, and the Court next overruled the motion of defendant to instruct the jury to return a verdict for the defendant, to each of which rulings of the Court counsel for defendant duly excepted.

Counsel for defendant next offered the following
44 prayer:

"The jury are instructed that they may return a verdict for the defendant for a one-half undivided part of the property claimed in the declaration."

but the Court refused to grant said prayer, to which refusal of the Court defendant by his counsel then and there duly excepted.

Whereupon counsel for defendant asked the Court to charge the jury that they may return a verdict for the defendant for a one-half undivided part of the property claimed in the declaration; but the Court refused to so charge the jury, to which counsel for defendant then and there duly excepted.

Whereupon the Court charged the jury as to the form of their verdict only, and in words as follows:

"The jury are instructed that if they should find for the plaintiff, your verdict should be for the plaintiff for an undivided one-half of the north half of Lot Seven, Square 834."

To which counsel for defendant then and there duly excepted.

Thereupon the jury retired to consider of their verdict, and afterwards returned into court and rendered a verdict in favor of the plaintiff for the possession of an undivided one-half of the north half of Lot 7, Square 834, City of Washington, District of Columbia.

Be it further remembered that each of the foregoing exceptions to the rulings of the Court mentioned in this bill of exceptions
45 was separately and severally made and taken at the time thereof, and before the jury retired to consider of their verdict; that the presiding justice at the trial thereof entered the same in his minutes at the time of the taking of the same; and that now at defendant's request the same are separately and severally embodied in this bill of exceptions and signed and made a part of the record in this case this 17th day of August, A. D. 1907, now for then; and that the above contains all of the testimony and other proceedings had at the trial of said cause.

THOS. H. ANDERSON, *Justice.*

Settled by agreement:
JOHN RIDOUT,
Attorney for Plaintiff.
——— ———,
Attorney for Defendant.

Directions to Clerk for Preparation of Transcript of Record.

Filed August 19, 1907.

In the Supreme Court of the District of Columbia.

No. 48112.

ISAAC S. LYON, Plaintiff,
vs.
ISAAC B. BURSEY ET AL., Defendants.

The Clerk in making up the record on appeal in this
46 case will please include the following:

1. Declaration.
2. Separate Pleas.
3. Joinder of issue.
4. Memorandum of trial by jury.
5. Verdict of first trial.
6. Memorandum as to disposition of motions for new trial, in arrest of judgment, and to strike out and for non-suit.
7. Memorandum as to second trial by jury.
8. Memorandum of leave to file amended declaration and order for pleadings to original declaration to stand as pleadings to amended declaration.
9. Amended declaration.
10. Verdict.

11. Memorandum of disposition of motion for new trial and judgment in full.
12. Memorandum of filing of appeal bond.
13. Bill of exceptions submitted April 26, 1907, and note signing and filing.
14. Time to file transcript extended to May 31st, 1907, inclusive.
15. Extensions of term.

WM. HENRY WHITE,
Attorney for Defendant.

Service of a copy of the above accepted this 6th day of August, 1907.

JNO. RIDOUT,
Attorney for Plaintiff.

47 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 46, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 48112, At Law, wherein Isaac S. Lyon is Plaintiff, and Isaac B. Bursey is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 13th day of September, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1828. Isaac B. Bursey, appellant, *vs.* Isaac S. Lyon. Court of Appeals, District of Columbia. Filed Sep. 13, 1907. Henry W. Hodges, clerk.